

Jonathan Marashlian
The Helein Law Group

Jonathan:

I am writing in response to your email of 6/20/06 addressed to Steve Murray, Gallatin's interconnection negotiator, since the tone of your email indicates that a response from counsel is appropriate. My client shares your regrets as to the lack of progress in negotiating an interconnection agreement.

What you characterize as the nascent progress of negotiations is the result of Mr. Shuler's repeated refusal to negotiate in good faith. Gallatin has attempted to negotiate in good faith with BitWise but has been repeatedly frustrated by BitWise's conduct. Gallatin can document several instances where Mr. Shuler has failed to respond to emails seeking to schedule negotiating sessions and several instances where Mr. Shuler has failed to participate in previously scheduled negotiating sessions – often without any explanation. Fred Miri, the Company president, has spoken to Mr. Schuler on many occasions urging him to come back and negotiate, and almost every time he has told Mr. Miri that he has been busy or that the agreement is still being looked at by his attorney.

As to what you characterize as Gallatin resorting to "self-help" measures, Section 4.2 of the Interconnection Agreement ("ICA") between Gallatin and BitWise provides that Gallatin will not accept any orders while any past due, undisputed charges, remain unpaid. As of 8:30 AM on June 20, 2006, BitWise had an undisputed unpaid balance of \$18,543.25. After a payment made by Mr. Shuler latter in the day on June 20, our records indicate BitWise still has an undisputed unpaid balance of \$ 114.31. If Mr. Shuler desires that Gallatin begin processing Bitwise's orders, he must pay this unpaid balance.

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In the short period of time in which BitWise has been purchasing services from Gallatin, it has had past due balances on several occasions. This is a troublesome sign that either Bitwise is unable to pay or has insufficient internal controls to pay its bills on time. Either condition does not generate confidence that payment will ever be received. The amounts that have been past due are substantial and reflect several months of services provided to your client.

Thus, Gallatin is acting pursuant to the provisions of the ICA and is completely within its rights to refuse to accept new orders from BitWise as long as an undisputed unpaid balance remains due.

In addition, Section 21.2 of the ICA requires BitWise to give Gallatin notice of disputed amounts and the reasons therefore within 30 days of its receipt of the invoice containing the disputed charges. Section 17 of the ICA requires that all notices be in writing. The invoice that is the subject of the purported dispute in this case was mailed on April 25,

2006. Allowing five days for delivery, any dispute concerning the amounts in this invoice was required to be delivered to Gallatin in writing by May 31, 2006. The first written communication from BitWise regarding this purported dispute was sent to Gallatin on June 19, 2006. Thus, Gallatin was not even given timely notice of this purported dispute in the manner required by the ICA.

Keep in mind that the Arbitration window time frame opens on August 1, 2006. If BitWise continues to drag its feet on negotiations Gallatin may declare BitWise in default and terminate the existing agreement. Nonetheless, Gallatin remains willing to negotiate in good faith with BitWise and Mr. Murray and myself are available to discuss a new ICA at your convenience.

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